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AD–1154 (WHIP) (Special Provisions)

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U. S. DEPARTMENT OF AGRICULTURE
Natural Resources Conservation Service

SPECIAL PROVISIONS TO FORM AD–1154 WILDLIFE HABITAT INCENTIVES PROGRAM (WHIP) AGREEMENT

1 DEFINITIONS

All words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Wildlife Habitat Incentives Program which are found at 7 CFR Part 636.

2 RESTRICTIONS ON MITIGATION ACTIVITIES

WHIP funds cannot be used for mitigation of any kind, or on any land designated as converted wetland according to 7 CFR Part 12. Such lands can be included in a WHIP cost-share agreement, however cost-share funds cannot be expended on those acres.

3 AGREEMENT

A The participant agrees:

(1) To place eligible land into the WHIP for the period identified in the Wildlife Habitat Development Plan and to establish such practices according to the implementation schedule therein. Once the AD–1154 is signed by all parties, practices may be established in advance of the scheduled establishment time at the discretion of the participant. At least one essential practice must be commenced within the first 12 months of the agreement and all cost-share practices should be completed at least two years before the expiration date of the cost-share agreement;

(2) To comply with the terms and conditions of the Wildlife Habitat Development Plan (WHDP) and/or attachments to the WHDP, including the operations and maintenance agreement.

(3) To establish, maintain, and replace practices as agreed to in the Wildlife Habitat Development Plan;

(4) Not undertake any action on land under the participant's control which tends to defeat the purposes of this cost-share agreement, as determined by NRCS;

(5) To secure all needed local, State, and Federal permits prior to commencing the practice(s) on the designated areas;

(6) If, during the construction of any practice, a previously unidentified archaeological or historic site(s) is encountered, the participant shall discontinue work in the general area of the site(s) and notify the NRCS immediately; and

(7) To provide NRCS or its agent access to WHIP acreage to review the effectiveness of the practices during the agreement period.

B NRCS agrees, subject to the availability of funds, to:

(1) Share the cost with owners and operators of establishing wildlife habitat development practices, or an identified unit thereof, as agreed to in the Wildlife Habitat Development Plan;

(2) Provide for technical assistance to successfully establish the desired wildlife habitat and to meet the goals and objectives of the program.

4 PAYMENTS

Subject to the availability of funds:

A Payment will be made using the cost method and cost-share rate specified in the agreement. Payment will occur following a determination by NRCS that an eligible practice, or an identifiable unit thereof, has been established according to the appropriate standards and specifications required by the agreement.

B The cost-share payment (designated as AC, AA, AM, or FL) identified in the "cost/unit" column of the agreement support document shall be paid at the cost specified on the cost list which is in effect at the time installation of the practice is initiated and for the quantity or extent of the practice installed.

C Significant increases to cost-share payments shall be made at the cost specified on the cost list in effect at the time the practice is initiated upon execution of a modification of the agreement.

5 VIOLATIONS, DISPUTES, AND APPEALS

A **A violation** is the participant's failure to comply with any or all of the terms and conditions of this agreement, including, but not limited to the failure:

(1) to implement practices as scheduled in the Wildlife Habitat Development Plan;

(2) to meet specifications for establishing practices:

(3) to maintain in a satisfactory condition all cost-shared practices; or

(4) of a practice(s) because of circumstances within the control of the participant. If the participant removes the cause for noncompliance, a violation can be avoided.

B Other violations include, but are not limited to:

(1) Destruction of a practice established under the terms of the cost-share agreement without the approval of NRCS or failure to apply compensatory treatment for the destroyed practice as agreed to by NRCS.

(2) False application for payment.

C If NRCS makes an adverse determination, the applicant or participant shall be entitled to a review of that adverse determination in accordance with the appeal procedures found at 7 CFR part 614 or any successor provisions.

6 ERRONEOUS REPRESENTATION AND SCHEME OR DEVICE

A A participant who is determined to have erroneously represented any fact affecting a determination with respect to this cost-share agreement and the WHIP regulations, adopted any scheme or device which tends to defeat the purposes of this program, or made any fraudulent representation with respect to this agreement, will not be entitled to payments or any other benefits made in accordance with this agreement and the participant may be required to refund all payments received by such participant, plus interest, with respect to this agreement.

B Refunds determined to be due and owing in accordance with this agreement will bear interest at the Current Value of Funds Rate published annually in the *Federal Register* by the United States Department of Treasury.

C In addition to the provisions of paragraph 6A of these Special Provisions, the participant may be subject to civil or criminal liability under any applicable statutes, including but not limited to 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

7 NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE COST-SHARE AGREEMENT

NRCS agrees that, if any changes of any terms and conditions of this cost-share agreement are necessary, NRCS will notify the persons signing the AD–1154 of such change and such person will be given 30 days from the date of notification in which to agree to the revised terms and conditions or to terminate the agreement. The participant agrees that failure to notify the NRCS within the 30 day period may constitute agreement to the revised terms and conditions.

8 CORRECTIONS

NRCS reserves the right to correct all errors in entering data or in the results of computations in the cost-share agreement.

9 TERMINATION OF COST-SHARE AGREEMENT

A NRCS may terminate this agreement if a participant:

(1) violates the terms and conditions of this agreement, or

(2) transfers ownership or control of land subject to this agreement and the transferee refuses to assume the obligations of this agreement with respect to the transferred acreage.

B If NRCS terminates this agreement, then NRCS may require such participant:

(1) to refund in whole or in part, with interest, cost-share payments received under this agreement; and

(2) to reimburse any costs and expenses incurred by NRCS in the implementation, enforcement, or termination of this agreement.

C If NRCS determines that the nature or extent of the participant's action does not warrant termination of the agreement, the NRCS may require the participant to accept adjustments in future cost-share payments, as determined appropriate by NRCS. NRCS may consider a participant's failure to accept such adjustments as a reason to terminate the agreement.

10 JOINT LIABILITY

All participants who sign this agreement shall be jointly and severally liable for compliance with its terms and conditions, including the terms and conditions of the WHDP and/or attachments to the WHDP.

11 EFFECTIVE DATE AND MODIFICATIONS TO COST-SHARE AGREEMENT

A Changes may be made in this cost-share agreement through modifications that are agreed to by the participant(s) and NRCS.

B The WHIP cost-share agreement is effective when signed by the participants, and NRCS. Except as otherwise determined by NRCS, the agreement may not be revoked unless by mutual agreement between the parties.

C In the event that a statute is enacted during the period of this agreement which would materially change the terms and conditions of this agreement, the NRCS may require the participants to elect between acceptance of modifications in this agreement consistent with the provisions of such statute or termination of this agreement.

12 CIVIL RIGHTS REQUIREMENTS

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326 W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

13 COST-SHARE AGREEMENT SUPPLEMENT

A It is further agreed that _____ is the participant who will carry out the practices and treatment for which cost-share payments will be made. All cost-share payments for restoration practices shall be made in accordance with the division of shares provided in the WHDP. Application for Payment, AD–1161, shall be signed by

_____.

B It is further agreed that modification documents shall be signed in the name of

_____ by _____.